

(2022) 12 JH CK 0027

In the Jharkhand High Court

Case No : Criminal Appeal (D.B.) No. 70 Of 1995

Budhna @ Bodhna Oraon And Others

APPELLANT

Vs

State Of Jharkhand

RESPONDENT

Date of Decision : 22-12-2022

Acts Referred:

Indian Penal Code, 1860 — Section 142, 302
Code Of Criminal Procedure, 1973 — Section 313

Citation : (2022) 12 JH CK 0027

Hon'ble Judges : Rongon Mukhopadhyay, J; Ambuj Nath, J

Bench : Division Bench

Advocate : Aparajita Bhardwaj, Nehala Sharmin

Final Decision : Dismissed

Judgement

1. Heard Ms. Aparajita Bhardwaj, learned counsel appearing for the appellants and Ms. Nehala Sharmin, learned A.P.P.

2. This appeal is directed against the Judgment of conviction and order of sentence dated 05.06.1995, passed by Sri R. P. Verma, learned Additional Sessions Judge-II, Gumla in connection with Sessions Trial No. 173 of 1989, arising out of Sisai P.S. Case No.42 of 1989, corresponding to G.R. No. 261 of 1989, whereby and wherein, the learned Additional Sessions Judge-II, Gumla, held the appellants guilty of the offence under Sections 302/149 of the Indian Penal Code and thereby, sentenced them to undergo rigorous imprisonment for life.

3. Prosecution case was instituted on the basis of fardbeyan of the informant Garbhu Oraon, alleging therein that on the intervening night of 21/22.04.1989, he was sleeping in his house, when he heard the cry of alarm of his daughter-in-law. He rushed to the place of occurrence and saw his son Jogi Oraon lying in front of the house of his brother Birsra Oraon. His daughter-in-law, Jhibi Orain, told him that accused Bodhna Oraon, Saru Oraon, Sanicharwa Oraon, Manga

Oraon and Marwari Oraon had assaulted him by lathi, thereafter accused Sanicharwa Oraon and Manga Oraon crushed the head of his son Jogi Oraon by big rock due to which he succumbed to his injuries.

4. After investigation, police found the occurrence to be true and submitted charge-sheet against the appellants on 03.07.1989. After cognizance, the learned Chief Judicial Magistrate, Gumla, committed the case to the Court of Sessions on 22.07.1989, as it was exclusively triable by the Sessions Court.

5. Charge was framed against the appellants on 07.02.1990. The contents of the charge were read over and explained to him in Hindi to which he pleaded not guilty and claimed to be tried.

6. In order to prove its case, the prosecution has adduced both oral and documentary evidence.

7. Jhibi Orain (P.W.1) is the eye witness, who had also sustained injuries, has supported the prosecution case.

Jinda Bhagat (P.W.2) is a seizure witness leading to recovery of blood stained rock and bloodstained mud from the place of occurrence. He has proved his signature on the seizure list which is Ext.-1/1.

Fagua Oraon (P.W.3) is another eye witness and injured witness. Birsa Oraon (P.W.4) is another seizure witness he has identified his signature on the seizure list which has been marked as Ext- ½. Krishna Singh (P.W. 5) is the Investigating Officer of this case he has proved the place of occurrence. He has also proved the carbon copy of inquest report which has been marked as Ext.-3. He has proved the seizure list which has been marked as Ext.-4. He has proved the formal F.I.R. which has been marked as Ext.- 5.

Dr. J. P. Sanga (P.W.6), has performed the postmortem on the dead body of the deceased. He has proved the postmortem report which is Ext.- 6.

Dr. Ms. Jema Lakra (P.W.7) has proved the injury report of Jhibi Orain and Fagua Oraon which are Ext.- 7 series.

8. Statement of the appellants were recorded under Section 313 Cr.P.C. Defence is general denial of the occurrence and false implication.

9. On the basis of the evidence, both oral and documentary, available on record, learned Additional Sessions Judge-II, Gumla held the appellants guilty and sentenced them accordingly.

10. Ms. Aparajita Bhardwaj, learned counsel for the appellants has submitted that there is contradiction in the statement of the witnesses on the point of manner of the assault. She has also submitted that there is general and omnibus allegation against the appellants and the prosecution has not been able to prove its case against the appellants beyond the shadow of all reasonable doubts. Accordingly, it was prayed that this appeal be allowed and the appellants be

acquitted of the charge.

11. Ms. Nehala Sharmin, learned counsel for the State has submitted that both the wife and son of the deceased are eye witnesses. They also sustained injuries and as such their presence at the place of occurrence cannot be doubted. It was further submitted that Jhibi Oraon (P.W.1) and Fagua Oraon (P.W. 3) both have corroborated each other on the point that the appellants had assaulted the deceased Jogi Oraon due to which he succumbed to his injuries. According to her, prosecution has been able to prove its case against the appellants beyond the shadow of all reasonable doubts. Accordingly, it was prayed that this appeal be dismissed.

12. Now, it has to be ascertained whether the prosecution has been able to prove its case against the appellants beyond the shadow of all reasonable doubts.

13. In order to come to the aforesaid finding, it has to be ascertained: -

(i) Whether the deceased Jogi Oraon died a homicidal death?

(ii) Whether the prosecution has been able to show that the appellants had caused homicidal death of the deceased Jogi Oraon?

(iii) Whether the statement of Jhibi Oraon and Fagua Oraon can be relied upon?

14. It is the case of the prosecution that the deceased Jogi Oraon had died a homicidal death.

Jhibi Oraon (P.W.1) and Fagua Oraon (P.W.3) have stated that on the date of occurrence at about 02:00 A.M, on hearing the sound of Mandar they came out of their house with the deceased Jogi Oraon. Thereafter the appellants reached there and Manga Oraon assaulted Jogi Oraon with lathi on his head due to which he fell, in the meantime other appellants also gave lathi blows to Jogi Oraon. Thereafter co-convicts Sanicharwa Oraon and Manga Oraon crushed the head of Jogi Oraon by a rock due to which he succumbed to his injuries. They have stated that when they tried to intervene, the appellants also assaulted them causing injuries.

Krishna Singh (P.W.5) is the Investigating Officer of this case. He has stated that he visited the place of occurrence and found the dead body of the deceased Jogi Oraon outside the house of Birsra Oraon, lying in a pool of blood. There was injury on the head of the deceased. He prepared the inquest report. He has proved the inquest report which is Ext.-3. He also seized a bloodstained rock from the place of occurrence, he has proved the seizure list which is Ext.-4. It transpires that the Investigating Officer had found injuries on the head and face of the deceased. His face was crushed and one eye was missing from the socket.

Dr. J. P. Sanga (P.W.6) has stated that on 22.04.1989, he performed the postmortem on the dead body of the deceased Jogi Oraon and found several injuries on his person. The injuries were ante-mortem in nature and were caused by hard and blunt substance, may be by lathi/stone.

From the perusal of postmortem report Ext.-6, it appears that skull bone of the deceased was crushed leading to partial wipeout of brain material and absence of left eye ball and protrusion of right eye ball. The injuries have been opined to be caused by blunt substance. The crushing of skull and wiping out of brain led to the instant death of the deceased.

From the aforesaid oral and documentary evidence, it is apparent that the deceased died due to the fact that he sustained injuries caused due to hard and blunt force, which crushed his head leading to wiping out of partial brain material and missing of left eye from his eye socket. The injuries as per the opinion of the Dr. J. P. Sanga (P.W. 6) may be caused by lathi or stone.

The findings of the doctor as reflected in the postmortem report is corroborated by the inquest report. Accordingly, we are of the opinion that the prosecution has been able to show that the deceased died a homicidal death.

15. It is further case of the prosecution that the appellants had caused homicidal death of the deceased Jogi Oraon. In order to prove this fact prosecution has adduced both oral and documentary evidence.

Jhibi Orain (P.W.1) and Fagua Oraon (P.W.3) have stated that the appellants had assaulted the deceased Jogi Oraon by lathi and thereafter Sanicharwa Oraon and Manga crushed his head by a large rock. They have also stated that when they tried to intervene they were also assaulted by the appellants due to which they sustained injuries. They have been cross-examined at length.

Jhibi Orain (P.W.1) in her cross-examination has stated that she witnessed the occurrence from a distance of 10 yards.

Fagua Oraon (P.W. 3) in his cross-examination has stated that on seeing the occurrence, people who were participating in the revelry, fled away from there. He has reiterated that he had seen the occurrence and is not a hearsay witness. He has further stated that Manga was the one who first assaulted his father.

There is nothing in their cross examination to doubt their veracity.

Dr. Ms. Jema Lakra (P.W.7) has stated that on 22.04.1989 she had examined Jhibi Orain (P.W.1) and found the following injuries on her person.

(i) Pain and swelling on the left elbow joint, swelling on back, pain in joints, pain on left thigh, pain in head.

(ii) There was no external injury.

(iii) The nature of injury was simple and was caused within twenty-four hours. The injuries were caused by hard substance may be by Danda.

On the same day she examined Fagua Oraon S/o Jogi Oraon and found the following injuries on his person.

(i) Cut injury above right eye 1"X1/2" X1/4".

The age of this injury was of within twenty-four hours. It was caused by sharp cutting weapon. According to her, Injury sustained by Jhibi Oraon was not possible due to fall. The injury found on Fagua Oraon was possible by fall on sharp pointed object.

16. Prosecution has been able to prove that both Jhibi Oraon (P.W.-1) and Fagua Oraon (P.W.3) sustained injuries during the occurrence. Accordingly, the presence of both Jhibi Oraon (P.W.-1) and Fagua Oraon (P.W.3) at the place of occurrence at the time of the occurrence stands established. Both these witnesses have been cross-examined at length. There is nothing in their cross-examination to doubt their veracity. They have corroborated each other on the point of date, time, place and manner of occurrence. They have stated that all the three appellants had assaulted the deceased by lathi and subsequently Sanicharwa Oraon and Manga Oraon crushed his head by a big rock due to which he succumbed to his injuries. Their oral testimony on the point of manner of assault by the appellants on the deceased is corroborated by the medical evidence, as such they can be relied upon.

Accordingly, we come to a finding that the prosecution has been able to show that deceased Jogi Oraon died a homicidal due to assault by the appellants Budhna @Bodhna Oraon, Saru Oraon and Mado Oraon @ Marwari Oraon.

17. The learned court below had discussed all the aspects of the evidence both oral and documentary available on record, while holding the appellants guilty. There is no infirmity in the impugned judgment to warrant any interference.

18. This appeal is dismissed.

19. Appellants are on bail. Learned court below shall take them into custody forthwith.

20. Pending I.A., if any, also stands disposed of.